



Appellant-defendant Laef Lewis appeals his conviction for Possession of Marijuana,<sup>1</sup> a class A misdemeanor. Specifically, Lewis argues that the evidence presented at trial was insufficient to sustain his conviction. Concluding that the evidence was sufficient, we affirm the judgment of the trial court.

### FACTS

Lewis, Aaron Traxler, Nacoma Perkins, and Chelsea Shepard went to a local fair on July 16, 2006, and went to Shepard's house in Kendallville later that evening. Shepard had a bag of marijuana at her house. Lewis rolled a joint of marijuana and "all four of [them] smoked [] it." Tr. p. 7, 18. Shepard placed the remaining marijuana in a cigarette pack and the group went for a walk.

Kendallville Police Department Officer Glen Hurst was dispatched to the area surrounding Shepard's house after a report of a possible vehicle break-in involving four people. Lewis, Traxler, Perkins, and Shepard were sitting on Shepard's porch when Officer Hurst arrived and asked for their identification. Officer Hurst noticed a slightly-opened pack of cigarettes lying on the porch and a clear plastic bag was visible inside the cigarette pack. When no one admitted that the cigarette pack belonged to them, Officer Hurst opened it and found a green leafy substance inside the plastic bag. From his training and experience, Officer Hurst concluded that the substance was marijuana because it had "the same odor uh, same look, same texture as marijuana." Id. at 27.

The State charged Lewis with class A misdemeanor possession of marijuana and class

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<sup>1</sup> Ind. Code § 35-48-4-11.

B misdemeanor unauthorized entry of a motor vehicle.<sup>2</sup> A bench trial was held on December 1, 2006, and Lewis was found guilty of class A misdemeanor possession of marijuana. Lewis now appeals.

### DISCUSSION AND DECISION

Lewis argues that there was insufficient evidence to sustain his conviction. Specifically, Lewis emphasizes that the evidence presented at trial demonstrated that the marijuana was Shepard's and that Lewis never possessed the cigarette pack. Additionally, Lewis argues that insufficient evidence was presented that the substance was, in fact, marijuana.

The standard of review for sufficiency claims is well settled. In addressing Lewis's challenge we neither reweigh the evidence nor reassess the credibility of witnesses. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). Instead, we consider the evidence most favorable to the verdict and draw all reasonable inferences supporting the ruling below. Id. We affirm the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. O'Connell v. State, 742 N.E.2d 943, 949 (Ind. 2001). A conviction may be sustained on circumstantial evidence if such evidence supports a reasonable inference of guilt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000).

To convict Lewis of class A misdemeanor possession of marijuana, the State was required to prove beyond a reasonable doubt that Lewis knowingly possessed marijuana. I.C. § 35-48-4-11. Possession of an illicit substance can be shown by either actual or constructive

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<sup>2</sup> The State dismissed the latter charge the day of Lewis's trial.

possession. Goffinet v. State, 775 N.E.2d 1227, 1230 (Ind. Ct. App. 2002). An individual has actual possession of an item when he has direct physical control over it. Id.

Lewis first argues that insufficient evidence was presented to prove that the substance Officer Hurst found was marijuana. However, Traxler testified that he had previously smoked marijuana and that the substance the group smoked was that drug. Tr. p. 12. Furthermore, Officer Hurst testified that he concluded the substance was marijuana based on his training and experience and the substance's odor, texture, and appearance. Id. at 26-27. This is sufficient evidence to prove that the substance Officer Hurst found was marijuana.

Lewis also argues that the State presented insufficient evidence of Lewis's possession of the marijuana. At trial, Traxler and Shepard both testified that Lewis had actual possession of the marijuana. Traxler testified that "all four of [the people at Shepard's house] smoked" the marijuana, id. at 7, and Shepard testified that Lewis "rolled it up" in a joint before they all smoked it, id. at 18.

Lewis cites Loudermilk v. State to support his argument that the evidence was insufficient to his actual possession. In Loudermilk, the evidence established that the defendant "touched the bag [containing marijuana] only once, holding it for approximately seven seconds before passing it to the next individual." 523 N.E.2d 769, 770 (Ind. Ct. App. 1988). We overturned Loudermilk's conviction, holding that a conviction for possession of marijuana requires "something more." Id. at 771.

Here, Lewis's possession and use of the marijuana undeniably constituted something more than the evidence presented in Loudermilk. First, the evidence established that Lewis

rolled the marijuana into a joint and smoked the joint with the group. His physical manipulation of the substance combined with his subsequent use constituted actual possession sufficient to sustain the conviction. Lewis's argument that there is no evidence that he possessed the cigarette pack in which Officer Hurst found the marijuana fails because the evidence established that Shepard placed the remnants of the smoked marijuana in the cigarette pack that Officer Hurst found. Tr. p. 8-9, 19, 26. Thus, it was reasonable for the factfinder to conclude that the remnants of marijuana that Officer Hurst found in the cigarette pack were from the marijuana that Lewis had rolled and smoked. In sum, Lewis's arguments are an invitation for us to reweigh the evidence and assess the credibility of witnesses—a practice in which we do not engage when deciding the sufficiency of evidence. Therefore, Lewis's sufficiency challenge fails.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.